Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
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Ex parte RAJASEKHAR AYALA and MARK S. BLUMHARDT

_____

Appeal No. 1997-4348
Application No. 08/088,708
_____

ON BRIEF
_____

Before THOMAS, HAIRSTON, and KRASS, Administrative Patent
Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

        This is a decision on appeal from the final rejection of

claims 1, 3 through 12, 14 through 16, 18 through 20, 22

through 25 and 27 through 30, all of the claims pending in the

application.

The invention is directed to a call forwarding system wherein calls are automatically communicated to selected locations.

Representative independent claim 1 is reproduced as follows:

1.   For use in an Advanced Intelligent Network (AIN), a system for automatically routing communications from a calling party having a Customer Premises Equipment (CPE) device to a secondary party having a single calling number for a plurality of CPE devices, each of said secondary party CPE devices placed at a different geographic location and having a corresponding communication address, the system comprising:

a Service Switching Point (SSP) in electrical communication with said calling party CPE device and said plurality of secondary party CPE devices, said SSP provisioned with Automatic Call distribution (ACD) architecture;

a Signal Transfer Point (STP) in electrical communication with said central office SSP; and

a Service Control Point (SCP) in electrical communication with said STP, said SCP adapted to forward control signals to said SSP causing said communications to be parked on queue in said ACD while said ACD performs selected routing functions in a predetermined sequence in an attempt to locate said secondary party at one of said communication addresses.

The examiner relies on the following references:

Brennan et al. (Brennan)   5,329,578   Jul. 12, 1994

(filed May 26, 1992)

Emery et al. (Emery)   5,353,331   Oct. 4, 1994

(filed Mar. 5, 1992)

Roger Berman et al. (Berman) "Perspectives on the AIN Architecture", <u>IEEE Communications Magazine</u>,(2-1992) p.27-32.

Claims 1, 3 through 12, 14 through 16, 18 through 20, 22 through 25 and 27 through 30 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner cites Emery and Brennan with regard to claims 1, 3 through 6, 12, 14, 15, 20, 22 through 25, 27 and 28, adding to this combination, in a new ground of rejection entered in the principal answer, Berman with regard to claims 7 through 11, 16, 18, 19, 29 and 30.

Reference is made to the briefs and answers for the respective positions of appellants and the examiner.

<div align="center">OPINION</div>

For purposes of this appeal, appellants group the claims as follows:

Group I: Claims 1, 3 through 6, 12, 14 and 15, directed to system and method claims which employ AIN technology with a Service Switching Point (SSP) and Service Control Point (SCP), the SSP being provisioned with Automatic Call Distribution (ACD).

Group II: Claims 7 through 11, 16, 18, 19, 29 and 30,

which employ AIN release 1.

Group III: Claims 20, 22 through 25, 27 and 28, employing

ACD.

The claims within each group stand or fall together.

Turning first to the claims of Group I, these claims all

require, inter alia, the SSP to be provisioned with ACD. The

examiner recognizes that Emery discloses no such ACD

capability. The examiner then relies on Brennan for such a

teaching, relying, specifically, on host node 11 of Brennan for

a teaching of ACD. Clearly, Brennan mentions nothing about

ACD. However, the examiner contends that this "black box" of

Brennan is a "functional equivalent of a ACD switch" [principal

answer-page 5] and concludes that it would have been obvious to

add such a switch to an AIN disclosed by Emery in order to

provide communication mobility.

We note, initially, that Brennan is not directed to an

Advanced Intelligence Network (AIN) as is Emery and the instant

invention so it is suspect whether the artisan would have

sought to combine Emery and Brennan. Moreover, the examiner

contends that Brennan discloses the "functional equivalent" to

ACD while appellants contend that there is no such suggestion

in Brennan. To buttress his position, the examiner cites page

106 of Newton's Telecom Dictionary by Harry Newton, published

by Flatiron Publishing, Inc., 1994. This portion of the

dictionary describes ACD as performing four functions: 1.

Recognizing and answering an incoming call, 2. Looking in a

database for instructions on what to do with the call, 3. As

per the instructions, sending the call to a recording or voice

response unit and 4. Sending the call to an agent as soon as

that operator has completed his/her previous call and/or the

caller has heard the canned message. Newton then describes ACD

as performing a management function providing information and

that this information is of three sorts: 1. Arrival of incoming

calls; 2. Information on abandoned calls "And" 3. Information

on the origination of the call.

The examiner contends that since this "third type of

information (information on the origination of the call) is met

via the caller line identification as disclosed by Brennan"

[principal answer-page 9], Brennan does disclose ACD because

the definition of ACD in Newton is written "in alternative

form" [principal answer-page 9]. We disagree and point out, as

do appellants, that the definition in Newton is not in
alternative form but, rather, in conjunctive form, using the
conjunctive "And" to separate the three sorts of information in
ACD.

The examiner counters that the instant specification only
discloses ACD as performing the call routing functions and
parking the caller in a queue and, therefore, Brennan shows an
equivalent function to the claimed ACD. However, the examiner
has chosen the definition of ACD by pointing to a dictionary
and appellants have chosen to use the term ACD in its ordinary
and accustomed meaning [reply brief-page 3], meaning that
dictionary definition. That definition requires more than the
mere routing and queue function and we interpret the term ACD,
as appellants would have us interpret it, to include each and
every function set forth in the definition of that term in
Newton's Telecom Dictionary. Since Brennan clearly does not
disclose ACD as defined in Newton's Telecom Dictionary, and
independent claims 1 and 12 require ACD, we will not sustain
the rejection of claims 1, 3 through 6, 12, 14 and 15 under 35
U.S.C. § 103. For similar reasons, we will not sustain the
rejection of claims 20, 22 through 25, 27 and 28 under 35

U.S.C. § 103 because independent claims 20 and 25 also require

ACD.

We now turn to the claims of Group II and reach the

opposite result with regard to the rejection of these claims

under 35 U.S.C. § 103.

Taking independent claim 7 as exemplary, since all the

claims in the group stand or fall together, this claims calls

for "AIN Release 1" SSP and SCP. Realizing that neither Emery

nor Brennan disclosed such, the examiner cited Berman to show

that the use of AIN Release 1 components was well known,

concluding that it would have been obvious to add AIN Release 1

components and predetermined routing in order to provide

communication mobility. Since the claims in Group II do not

require ACD, the examiner appears to rely on Brennan for the

teaching of routing calls in a predetermined manner while

parking callers on a queue. However, it would appear that

Emery, alone would provide such a suggestion [note the Abstract

of Emery which recites that the "AIN then uses that data to

route the call to the current location"]. In any event, the

only argument presented, in the reply brief, by appellants with

regard to this rejection is that Brennan uses calling line

identification (CLID) which is subject to blocking while the

instant invention, using AIN, is not subject to blocking.

Therefore, contend appellants, Emery/Berman are not combinable

with Brennan. While we would agree with appellants with regard

to the deficiencies of Brennan in not using AIN and in using

CLID, the instant claims recite nothing about blocking or not

blocking calls. Thus, appellants' argument in this regard is

not commensurate in scope with the claims and is, therefore,

not persuasive. Still further, appellants have not convinced

us as to why Emery and Berman would not be combinable in such a

manner as to arrive at, or suggest, the instant claimed subject

matter. We do not say that such an argument could not be made,

only that appellants have not made it. Arguments not made are

waived. In re Kroekel, 803 F.2d 705, 709, 231 USPQ 640, 642-43

(Fed. Cir. 1986).

    We have sustained the rejection of claims 7 through 11,

16, 18, 19, 29 and 30 under 35 U.S.C. § 103 but we have not

sustained the rejection of claims 1, 3 through 6, 12, 14, 15,

20, 22 through 25, 27 and 28 under 35 U.S.C. § 103.

    Accordingly, the examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR §
1.136(a).

AFFIRMED-IN-PART

JAMES D. THOMAS   )
Administrative Patent Judge   )
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KENNETH W. HAIRSTON   )   APPEALS
Administrative Patent Judge   )   AND
) INTERFERENCES
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ERROL A. KRASS   )
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